IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 29765 of 2007(R)

PETITIONER:

R.LATHA, PROPRIETRIX, KALYAN RADYMADES,
ROUND SOUTH, TRISSUR DISTRICT, KERALA STATE.

BY ADV. SRI.M.UNNIKRISHNA MENON
SRI.K.M.JAMALUDHEEN
SMT.LATHA PRABHAKARAN

RESPONDENTS:

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1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

2. THE INTELLIGENCE OFFICER, SQUAD-I,
OFFICE OF THE INSPECTING ASSISTANT
COMMISSIONER (INTELLIGENCE),
AGRICULTURAL INCOME TAX AND SALES TAX,
CIVIL LANE, AYYANTHOL, TRISSUR.

BY GOVT. PLEADER MR. K.P. PRADEEP.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON 16-10-2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 29765 OF 2007 R
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Dated this the 16th October, 2007

J U D G M E N T

The prayer in this writ petition is to quash Exts. P15 to P18 and to declare that the petitioner is not liable to pay the penalty imposed by the aforesaid orders.

2. Exts. P15 to P18 are the orders issued by the 2nd respondent imposing penalty on the petitioner for violation of the provisions of the K.G.S.T. Act. Though statutory remedies are provided against Exts. P15 to P18 that has not been availed of by the petitioner. Instead, the petitioner has filed this writ petition.

3. The only contention raised by the learned counsel for the writ petitioner for not availing of the statutory remedies, is that following Exts. P10 and P11, when the 1st respondent considered the matter and issued Ext. p14 order, the 1st respondent had disagreed with the findings of the Appellate Tribunal. Counsel would contend that since the 1st respondent was not

competent to disagree with the conclusions of the Appellate Tribunal, consequential orders Exts. P15 to P18 are without jurisdiction. According to the learned counsel, in view of this the petitioner is not bound to pursue the statutory remedy and can maintain the writ petition.

4. I have considered the submissions made by the learned counsel for the petitioner. In my view the petitioner has to be relegated to pursue the statutory remedies against Exts. P15 to P18. As far as the question regarding the competency of the 1st respondent to disagree with the findings in Exts. P10 and P11 orders of the Tribunal is concerned, that also is a matter which the authority can examine once the petitioner takes recourse to the statutory remedies. Although the petitioner has raised objections to Ext. P14, the said order is dated 19-11-2005 and the petitioner has not challenged the said order till date and this order has become final. The fact that Ext. P14 is an order of remand does not mean that the petitioner should not have challenged the objectionable part of Ext. P14 in time.

5. Therefore, prima facie, I am not inclined to allow the petitioner to argue on the merits of Ext. P14 at this distance of time. However, I do not enter into a conclusive finding on this aspect as otherwise it will prejudicially affect the petitioner in the further proceedings that he may initiate against the impugned orders.

6. Therefore, I do not find any reason to entertain this writ petition. Relegating the petitioner to pursue the statutory remedy and leaving open the contentions raised this writ petition is dismissed.

ANTONY DOMINIC
JUDGE

jan/-